

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1140 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

MARATHA PRAKASHBHAI GANAPATBHAI

Versus

DISTRICT MAGISTRATE

Appearance:

MS. BANNA DATTA for Petitioner

MR KT DAVE, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 24/04/2000

ORAL JUDGEMENT

#. The petitioner - Maratha Prakashbhai Ganpatbhai has been detained under the provisions of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short) by virtue of an order passed by District Magistrate, Mehsana, in exercise of powers under Section

3(1) of the PASA Act, dated September 30, 1999.

#. The grounds of detention indicate that the detaining authority took into consideration 5 offences registered against the petitioner. The detaining authority also took into consideration the statements of four anonymous witnesses and came to conclusion that the petitioner is a "bootlegger", that his activities are detrimental to public order, that fear expressed by the witnesses qua the petitioner was genuine and therefore, powers under section 9(2) of the PASA Act were exercised by the detaining authority by not disclosing identity of these witnesses.

#. Ms. Datta tried to support this petition by stating that the detaining authority has, in detail considered the representation in the month of February, 2000 after the date of approval of the detention, when it had become functus officio. This would affect the right of the detinue of making an effective representation envisaged under Article 22(5) of the Constitution of India and render continued detention bad in law. She has placed reliance on the case of Navalshankar Dave v. State of Gujarat AIR 1994 SC 1496.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. Considering the rival side contentions, it is amply clear from the communication produced on record by Ms. Datta, received from the detaining authority dated ____February, 2000 which indicates that the detaining authority has considered the representation made on behalf of the detinue in detail. Mr. Dave, learned AGP states that the order of detention was approved by the government on 6th October, 1999 and as such, the detaining authority had become functus officio. All that it was expected to do was to forward the representation to the government for its expeditious consideration. Instead, the detaining authority has itself considered the representation. This can be said to have adversely affected the right of the detaining authority of making an effective representation. This would render the continued detention bad in law (Navalshankar Dave v. State of Gujarat AIR 1994 SC 1496).

#. For the aforesaid reasons, the petition deserves to be allowed. It is so allowed. The impugned order of detention dated September 30, 1999 is quashed and set aside. The detinue Maratha Prakashbhai Ganpatbhai is

ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

pirzada/-